

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
NOVEMBER 9, 2016**

**CALL TO
ORDER
6:00 pm**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. at the Earl Bennett Building, 1035 First Ave West, Kalispell, Montana. Board members present were, Dean Sirucek, Jim Heim, Kevin Lake, Jeff Larsen, Mike Horn and Greg Stevens. Marie Hickey-AuClaire and Ron Schlegel had an excused absence. Mark Mussman, Rachel Ezell, Donna Valade and Erik Mack represented the Flathead County Planning & Zoning Office.

There were approximately 30 people in the audience.

**APPROVAL OF
MEETING
MINUTES
6:00 pm**

Sirucek made a motion, seconded by Lake to approve the October 12, 2016 meeting minutes.

**BOARD
DISCUSSION
6:01 pm**

None

**ASK THE
QUESTION
6:01 PM**

Sirucek asked the question

**ROLL CALL TO
APPROVE
MEETING
MINUTES
6:01 pm**

On a roll call vote the motion passed on a 6-1 vote with Greg Stevens abstaining as he was not present for the October 12, 2016 meeting.

**PUBLIC
COMMENT
(not related to
agenda items)
6:01 pm**

None

**JC&A, LLC
(FZC-16-10)
6:01 pm**

A zone change request in the Westside Zoning District by JC&A LLC. The proposal would change the zoning on three parcels containing approximately 4.3 acres from R-1 (*Suburban Residential*) to I-1 (*Light Industrial*). The subject properties are located at 2174 Airport Road, south of Kalispell.

STAFF REPORT
6:08 pm

Valade reviewed updated Staff Report FZC-16-10 for the Board.

BOARD
QUESTIONS
6:08 pm

Stevens asked about performance standards with regard to buffering when an industrial zone abuts any of the R zones.

Mack stated that there were greenbelt requirements in Section 5.05 of the zoning regulations.

Sirucek stated he had a problem with Finding #1 of the staff report under P.5.5 which states: "Restrict industrial uses that cannot be mitigated near incompatible uses such as residential, schools, environmentally sensitive areas such as wetlands, floodplains, riparian areas, areas of shallow groundwater, etc. The applicant is proposing an industrial zone adjacent to industrial uses and agricultural. The property is not located within an environmentally sensitive area and not currently located next to a school.'

Sirucek asked if this was a conflict between the I-1 designation and the school.

Valade stated no, there was already industrial bordering this property is across the street from the proposed school so there is a buffer. The proposed school also borders industrial zoning.

APPLICANT
PRESENTATION
6:10 pm

Ted Matelich-356 Shelter Valley Dr., Kalispell stated he owns the property. He purchased the property twelve (12) years ago and uses it as a contractor's storage yard. He felt the zone change was a good fit for the property with Wisher's bordering them on two (2) sides.

BOARD
QUESTIONS
6:14 pm

Sirucek asked if the owner planned to subdivide the property.

Matelich stated no.

AGENCY
COMMENTS
6:15 pm

None

PUBLIC
COMMENT
6:16 pm

Mayme Mullis-2172 Airport Road-gave some history of the property. She was concerned about the strip of land with the pump-house for the shared well. She did not want this land developed.

**APPLICANT
REBUTTAL
6:24 pm**

Matelich stated he was not going to change anything and would not block off the pump-house.

**BOARD
QUESTIONS
6:25 pm**

Horn asked about the shared well.

Matelich stated all the property owner's shared in the upkeep and maintenance of the well.

**STAFF
REBUTTAL
6:27 pm**

None

**BOARD
DISCUSSION
6:27 pm**

None

**MAIN MOTION
TO ADOPT
F.O.F.
(FZC-16-10)
6:27 pm**

Stevens made a motion seconded by Horn to adopt Staff Report FZC-16-10 as Findings-of-Fact.

**BOARD
DISCUSSION
6:27 pm**

Sirucek wanted something in the findings about the proposed school not being in conflict with the proposed zoning.

**SECONDARY
MOTION TO
AMEND
FINDING #1**

Sirucek made a motion seconded by Horn to amend Finding #1 to add: "The planned Kalispell middle school is located across Airport Road from said property; no conflicts have been identified due to this zoning change and the planned school development."

**BOARD
DISCUSSION**

Heim asked if the conflicts Sirucek was looking for were with the growth plan and industrial zoning being in proximity to the schools.

Sirucek stated that it was in the growth plan and mentioned in the comments from the city.

Mussman stated that this was more of an answer to the comment from the city of Kalispell than it is to the Flathead County Growth Policy in creating adequate industrial properties.

Mack stated that if this zone change was going to impact schools the most appropriate place to add this sentence was in Finding #7.

**ROLL CALL TO
AMEND
FINDING #1
6:41 pm**

On a roll call vote the motion failed 6-1.

**SECONDARY
MOTION TO
AMEND
FINDING #7
6:41 pm**

Sirucek made a motion seconded by Heim to amend Finding #7 by adding, "The planned Kalispell middle school is located across Airport Road from said property; no conflicts have been identified due to this zoning change and the planned school development."

**BOARD
DISCUSSION
6:42 pm**

None

**ROLL CALL TO
AMEND
FINDING #7
6:43 pm**

On a roll call vote the motion passed 6-1.

**ROLL CALL TO
ADOPT F.O.F.
AS AMENDED
6:43 pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FZC-16-10)
6:43 pm**

Heim made a motion seconded by Sirucek to adopt Staff Report FZC-16-10 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION
6:43 pm**

Sirucek stated he did not have a problem with the issue of the school being across the road was due to a change in elevation which provided natural screening between this property and the proposed school.

Stevens discussed the comments from the City of Kalispell at length. He thought this industrial zoning was ideal for this area.

**ASK THE
QUESTION
6:48 pm**

Larsen asked the question.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FZC-16-10)
6:49 pm**

On a roll call vote the motion passed unanimously.

**DONOVAN &
DEBRA
BERGESEN
(FZC-16-11)
6:50 pm**

A zone change request in the Highway 93 North Zoning District by Carver Engineering on behalf of Donovan & Debra Bergeson. The proposal would change the zoning on a parcel containing approximately 11.8 acres from SAG-10 (*Suburban Agricultural*) to I-1H (*Light Industrial Highway*). The subject property is located at 255 Scenic Ridge Road, north of Kalispell.

**STAFF REPORT
6:50 pm**

Mack reviewed Staff Report FZC-16-08 for the Board.

**BOARD
QUESTIONS
6:52 pm**

None

**APPLICANT
PRESENTATION
6:54 pm**

Andy Hyde-Carver Engineering-1995 3rd Ave East, Kalispell stated he represented the applicant. The applicants would like to put their RV sales business on the western part of the property fronting the highway and live on the eastern part of the property. Hyde addressed the comments from the City of Kalispell stating that this zoning is encouraged in the Growth policy. He mentioned a few points regarding comments from the city stating that this zone change was actually a goal and policy of Growth Policy is to encourage development compatible with current landfill, entire parcel is within the ¼ mile landfill buffer area, contrary to city comments. He addressed MDT access concerns from City and how full movement improvements already exist on the highway and it should not be an issue getting a revised approach. Regarding the scenic corridor and preservation of views the proposed zoning had stringent mitigation requirements built into the zone.

**BOARD
QUESTIONS
7:06 pm**

Heim stated you would not be able to see the RV lot because of the cut slope and trees.

Sirucek asked about future subdivision plans

The applicant stated they had no plans to subdivide.

**AGENCY
COMMENTS
7:06 pm**

None

**PUBLIC
COMMENT
7:06 pm**

David Blasdel-2250 West Valley Dr., Kalispell owns adjacent property and is in favor of the project.

Sharon Demeester-415 Chestnut Dr., Kalispell was concerned about traffic. She read the definition of the SAG-10 zoning and how it is a buffer, she also read the reason for the buffer of I-1H. Commercial destroys the idea of scenic corridor; it was zoned by the people in the area. She talked about putting together the Riverdale Neighborhood Plan and rewrites on the growth policies. She talked about not being bound by a plan, and how she felt frustrated and disregarded.

**APPLICANT
REBUTTAL
7:15 pm**

Hyde stated that the traffic generation for the proposed use was 5-10 trips per day at off-peak season and 10-20 during peak season. This was very minimal when compared to Raceway Park, Majestic Valley Arena and the landfill. He stated this property was not in the Riverdale Plan, and how it would comply with landfill transition if it was in the plan area. The Growth Policy has the same policy and goal.

**BOARD
QUESTIONS
7:20 pm**

None

**STAFF
REBUTTAL
7:20 pm**

None

**BOARD
QUESTIONS
7:20pm**

None

**MAIN MOTION
TO ADOPT
F.O.F.
(FZC-16-11)
7:20 pm**

Lake made a motion seconded by Sirucek to adopt Staff Report FZC-16-08 as Finding of Fact.

**BOARD
DISCUSSION
7:22 pm**

Stevens stated that this zoning is supported by the Growth Policy contrary to the comment by the City of Kalispell.

**ASK THE
QUESTION
7:22 pm**

Sirucek asked the question.

**ROLL CALL TO
ADOPT F.O.F.
(FZC-16-11)
7:22pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FZC-16-11)
7:23pm**

Stevens made a motion seconded by Heim to adopt Staff Report FZC-16-11 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION
7:23 pm**

None

**ASK THE
QUESTION
7:23 pm**

Larsen asked the question.

**ROLL CALL TO
RECOMMEND
APPROVAL
7:23 pm**

On a roll call vote the motion passed unanimously.

**WHITEFISH
RIVER TRAILS
PH2-5 (NEW
MATERIAL)
(FPP-16-01)
7:24 pm**

A request from Conservation Land Use, LLC for preliminary plat approval of Whitefish River Trails Phase 2-5; a 17-lot clustered residential subdivision located approximately 1/3 mile east of Whitefish Stage along Mannington Street. The proposed subdivision would create 17 lots with 16 of the lots clustered toward the western side of the property. The application was reviewed by the Planning Board on June 8th and August 10th and reviewed by the Flathead County Commissioners on September 15th and October 13th. 'New material' requiring an additional public hearing per 4.4.6 and 4.4.7 FCSR was provided at the

October 13th Commissioners meeting which included correspondence from MDT regarding approach permit process and proposal to amend the plat to create a .486 acre common area along the southern boundary of the proposal between the open space lot (Lot 21) and Lot 8 to be owned by the Homeowners Association.

The Board took a short break.

**STAFF REPORT
7:31 pm**

Ezell reviewed the new information and updated Staff Report FPP-16-01 for the Board.

**BOARD
QUESTIONS
7:36 pm**

Sirucek asked why there was no discussion in the Findings-of-Fact for the variance for the withdrawal of the road paving.

Ezell stated the applicants withdrew that request and are no longer requesting a variance to the width of the road. They will pave the roadway to the open space lot (Lot 21) to the Road & Bridge Department standards. Because of that, there is a Finding-of-Fact and a condition that would need to be modified.

Heim said he didn't fully understand the issue about the increase of number of lots gaining access through Whitefish Stage Road and the subdivision road. He asked if that had gone away.

Ezell clarified. She spoke about the email from MDT stating that although there was a signed agreement between the neighbors, the applicant and MDT that a certain number of lots would be developed, the applicants could come in afterwards and modify the existing approach and did not need signatures from the neighbors who signed the initial agreement.

**APPLICANT
PRESENTATION
7:37 pm**

Eric Mulcahy, Sands Surveying, 2 Village Loop in Kalispell, represented the applicants. He stated that what they essentially did with the commissioner's office was due to the number of items the planning board and the commissioners struggled with such as the approach onto Whitefish Stage Road into the project and the original approach permit as well as the issue over the flag lot, they provided the commissioners with correspondence from MDT as well as a redesign of that 'flag-lot' making it a lot with a 60' county standard road going to it with a hammerhead turn-around. He spoke in detail about the comments from the neighbors regarding the approach permit and agreement with

MDT. He also spoke about the fact an approach permit can be modified without having to go back to the neighbors for 'permission.' MDT won't approve an approach permit until they have preliminary plat approval. This information was provided to staff and to the commissioners who deemed it new information and therefore required another public hearing before the planning board. He stated they had sent a formal letter removing the request for the variance. He pointed out to the board the strip of land that basically connects the cluster development to the open space lot. They made that a common area lot that will be owned by the association with a 60' right-of-way or easement which will be built to county standards. There will be a county standard road that goes from Whitefish Stage Road to the lot with a turnaround that meets county standards. The lot will be no different than the rest of the lots in the subdivision with no 'flag pole' attached to it. The 'flag pole' is essentially part of the association. He explained the reason there is a flag pole at all is the FCZR require that when you do a cluster subdivision, all of the property has to be contiguous. So what they've done was make the open space along the river and the clustering lots contiguous. He reiterated what Ezell had mentioned regarding the new information being reviewed under FCSR Section 4.4.6.

**BOARD
QUESTIONS
7:41 pm**

Larsen asked which condition addressed the turnaround.

Mulcahy said it was the condition that stated all roads must be built to county standards. He handed Larsen a document that was given to the commissioners when they went through the variance and said that if the fire department wanted a cul-de-sac they would build a cul-de-sac as opposed to the hammerhead turnaround.

Stevens asked how the 10-foot strip of land would be conveyed to the Homeowners Association.

Mulcahy stated it was conveyed with a deed. Each homeowner would own a pro-rata share of that open space lot.

Stevens asked if the separate 10-foot chunk had a certificate of survey, a tract number or a lot number.

Mulcahy said it was created with the plat just like any park or open space deeded to each lot that will own 1/17th of the open space lot.

**AGENCY
COMMENTS
7:46 pm**

None

**PUBLIC
COMMENT
7:47 pm**

Karl Rudbach, 542 Central Avenue in Whitefish was the attorney representing some of the neighbors. He handed out some materials to the board and staff and read the names of the neighbors he was representing. He pointed out on the map where they lived. He spoke of the letter from MDT regarding the access and pointed out the original approach permit that was for 12 lots. He also pointed out the letters from some of those homeowners he represented that could not be at the meeting that night and what their concerns were. He read a section from a letter by Dennis Oliver of the Department of Transportation regarding how many lots there would be in the subdivision and noted it would be twelve (12) on the approach permit. His clients' position was that they relied on the representation there would be no more than twelve (12) lots and made changes to their property based on that. Based on that issue, they were asking the board to not recommend approval of the new preliminary plat.

He said the next issue was creating a new lot to get to lot 21. He said the 10' wide strip of land was almost half a mile long connecting the other lots to lot 21. He spoke at length about the 'flag-lot' and his understanding of what that was and how it did not appear to meet the criteria of the Flathead County Subdivision Regulations (FCSR).

The final point he spoke about was the open space they were using was a conservation easement that was good for another 13 years. He felt the policy behind clustering was to preserve land that would otherwise not be preserved. The conservation easement was good for another 13 years so it would be good for that long. In addition to that, it was his understanding there was floodplain and steep slopes so it couldn't be developed anyway. It was their position the developer shouldn't be able to use that as open space. He asked the board to recommend denial of the preliminary plat.

**BOARD
QUESTIONS
7:41pm**

Stevens asked Rudbach if he thought the difference between 13 years and perpetuity was a long time.

Rudbach said yes.

Stevens said this lot would be designated as open space for perpetuity regardless of it having a conservation easement on it or not. He felt the conservation easement was irrelevant.

Mussman spoke about what should be considered in the open space lot. If a parent tract contained conservation easements, steep slopes, wetlands, flood hazard areas or other sensitive areas the lot really shouldn't be developed. In his experience, you would want to put all those issues in an area that is protected from development for as long as you possibly can to protect the interests of future buyers in the short and the long term. The developer in this case was doing just that by having the open space lot where these issues were occurring.

Mussman said there are other clustered subdivisions in Flathead County that don't have the advantage of having these sensitive areas in the open space. What happens in those situations is that there is always pressure to create more lots.

Stevens asked if there were a section in the FCSR that stated open space lots could only be designated on areas that are buildable.

Mussman said he thought open space lots were not really addressed in the FCSR.

Ezell said there are standards for parkland but in this case it isn't necessarily parkland.

Mussman said in the Flathead County Zoning Regulations (FCZR), the cluster sites in Section 5.09.030 are where the residential lots are. He read some of the criteria, one of which was that those lots shall not be located in a 100-year floodplain. He stated the open space lot in this particular proposal contains those features that cannot be in the residential lots. That was what staff was thinking when they had discussions with the applicants and the technical representative.

Larsen stated these items should be discussed during Board Discussion and they should move forward with Public Comment.

Stevens asked Rudbach how he would convey the 10-foot strip. He wondered if it would be a deed of conveyance or a warranty deed and what would the legal description be.

Rudbach said he thought the developer could do it as Mulcahy discussed; having each lot owner designated as owning 1/17th of the open space lot.

Larsen said the plat creates it and once you file the plat saying it's an open space strip that creates it just like it creates all the lots in the subdivision. They put a portion of the acreage added to the net acreage of each lot and that designates them a portion of it and they have to pay a portion of the taxes on it.

Horn said his understanding was that convey meant there was something identified on a certificate of survey with the boundaries described and fixed identifying it as a separate piece of property. You can't convey something that's not identified.

Larsen said it would be identified as a homeowners parcel and each lot would own 1/17th of it in their acreage.

Rudbach said his point was that it falls under the definition of a lot in the FCZR so they felt it was an additional lot that would need to be counted for density.

Sirucek read a portion of the application from the department of highways. He said there was nothing there that he read that stated 12 lots would be the maximum. Any change of use would require a new permit.

Rudbach agreed.

Sirucek commented there was discussion between the developers and Rudbach's clients but there was no written agreement.

**PUBLIC
COMMENT
(Continued)**

Bill Ashe, 1870 Pine Grove Lane, stated he owned property just south of most of the development. He had a problem with how the clustering was being figured. He referenced 5.09.206 FCSR and commented the regulations call them 'dwelling units'. It was strongly implied you could put a dwelling on those pieces of property. He pointed out Lot 21 on the map and commented about how the developer calculated his lots. He read a portion of FCSR, Section 4.7.4, under the section about lands unsuitable for subdivision. He wanted to know if that parcel was unsuitable for subdivision why was it included in calculating the dwelling units. He asked the board to deny the proposal because the high density should not have been allowed.

Ralph Hemp, 1930 Pine Grove Lane, felt there was a major problem with the clustering. There was a total misunderstanding on the statutes. If you look at the clustering section, the calculation is based, not on how many lots but on how many dwelling units. He felt the planning department skipped an essential step. He referenced the section in the FCSR regarding land unsuitable for subdivision. He felt if you can't have a subdivision, you can't have a dwelling unit. He showed the board some pictures of the open space lot. He also spoke of the conservation easement and the fact the developer couldn't have a dwelling unit on that parcel. He asked the board to look at Section 4.4.7 FCSR and reiterated the clustering and bonus should be nothing. He spoke about the access being limited and read a portion of the approach permit. He stated the board could not approve a subdivision unless there was an access. He read Section 4.17(c) and Section 4.7.15 stating the commissioners shall not approve a subdivision unless there is legal and physical access to each lot. He commented there was no new information and the only thing that would breach the contract agreement between the homeowners would be if the planning board became the developer's partner and approve the subdivision. Even if the board approved the subdivision conditionally, they would breach the contract. He asked the board to allow him to comment after the applicants speak again because he was there to get to the truth.

Stevens said Mr. Hemp mentioned the board couldn't approve the subdivision unless there was access; but did he understand the board was reviewing a preliminary plat and that grants nothing as far as being able to convey a lot. If the board were to put a condition on it that required access, when it came to filing a final plat, if there wasn't access it won't be filed. It's a two-step process.

Hemp commented he respectfully disagreed.

Stevens reiterated that the developer can't apply for a new approach permit until he has preliminary plat approval.

Hemp stated that after speaking with Mr. Oliver at the Montana Department of Transportation, if the board approved the subdivision, even conditionally, then they would have changed the conditions of the agreement. When there is a change of conditions, the developer can then apply for a new approach permit. He reiterated that even if the board conditionally

approved the subdivision, they would be an accomplice to breaching the original agreement.

Molly Schwarz, one of the applicants, stated they had worked really hard on this project and they really wanted it to be a nice subdivision. She commented that even though there seemed to be a consensus that there was some sort of trickery to get the extra lots, it really seemed to be the right thing to do to satisfy the land along the river. They want the project to be a fully compliant subdivision. In trying to understand how they got a unanimous disapproval from the planning board prior to going to the commissioners, she went through the video and felt there were two concerns. One of those was the access and the other was the flag lot. She wanted to answer questions she didn't feel were answered at the last meeting.

On the issue of the access, they have the ability to apply for a new approach permit. There is deeded legal access for the subdivision to Whitefish Stage Road. There was no agreement with the neighbors. However, it is true, that when everyone was getting together and MDT was asking what the current plan was, there was discussion about how many lots were currently in play. It wasn't meant to limit further development or for people to make decisions based on it. She felt like it was a misunderstanding and went to the neighbors after the commissioners meeting and tried to talk to them. They've reached out to the attorneys as well. The neighbors weren't interested in that. She asked the board if they wanted her to go into more detail or could they just condition the preliminary plat approval on the developer getting access.

Larsen stated she would have to wait and see if a board member asked specific questions on that issue.

Schwarz commented that Mulcahy handled the issue of the flag lot really well.

Chris West, 1840 Pine Grove Lane, lives south of the proposed subdivision. He was concerned about the original access. He spoke about the other 4-5 lots surrounding the proposal and stated a developer could subdivide those into 17 or 18 more lots and even though they were not applying for that at this time, there could potentially be 80-100 lots there that had an access approved for 12. He spoke of the developer already putting the infrastructure in for this proposal. He felt they put the cart before the horse.

Marianne Hemp, 1930 Pine Grove Lane, stated they bought their property based on the planning for the area. She realized growth was going to take place, but she didn't understand how they could just change the zoning. It was difficult for her to understand and she wanted the board to take that into consideration.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP-16-01)
8:38 pm**

Stevens made a motion seconded by Sirucek to adopt Staff Report FPP-16-01 as Findings of Fact.

**BOARD
DISCUSSION
7:39 pm**

Stevens commented that the assumption was made that because the land was unsuitable for subdivision that you couldn't have a residence on it. He wasn't sure that was true because if he owned a parcel of land that was not sub-dividable and he wanted to put a residence on it, he could go to an engineer who might show him how he could raise the land out of the floodplain to build a home. He might not be able to subdivide the property but he could sure have a dwelling unit on it if he was willing to do what it takes to satisfy the Flathead County Health Department and the Flathead County Planning Department. He didn't have a particular issue with that statement. The issue he had was with Mr. Rudbach's calculations. He asked planning staff what their thoughts were.

Mulcahy stated he did not have a chance for rebuttal and wanted to speak to that question.

Stevens withdrew his motion.

**APPLICANT
REBUTTAL
8:42 pm**

Mulcahy commented that he was one of the planners that helped write the cluster section of the FCSR. He disagreed with Mr. Ashe and Mr. Hemp on how they were interpreting the section. When they were writing the section they essentially looked at a large piece of property that wanted to extract some of that land. They were land rich but money poor but wanted to continue doing what they were doing on that land, whether it was extracting trees, harvesting land or running cattle. When they wrote the section, they put together a table to say how many lots or units because it could be lots or a condominium complex where there were units. They created the density based off those lots and units. They said if a farmer had 160 acres or a whole section and clustered around a pivot to create lots in a corner,

but still had his farmhouse on a piece that was greater than 20 acres, we aren't going to say he can't have that farmhouse. This is why at the very end of that cluster section 5.09.040 they specifically say that the open space parcel, if it's over 20 acres, can have a residential or single family dwelling on it. These units were the units that cluster, then you'd have your open space parcel and would continue to farm, harvest trees or run cattle or just have a large open space and then could have a house on that open space. It was pretty simple. It wasn't a conspiracy and the planning office is interpreting it as it was written. The other item that was brought up by the neighbors was that the developer was somehow pulling a fast one by using a floodplain and/or steep slope area of the development for the open space. If you read the Growth Policy or Neighborhood Plans that is always the place they recommend the open space be located. The parkland section of FCSR states that if you take cash-in-lieu of parkland, you can buy open space and conservation easements in these sensitive lands. Sensitive lands are an area that has always been encouraged for open space. He gave an example of a subdivision where they created 150 acres of beautiful open space land that protects wildlife habitats and wetlands for perpetuity. It's not something shady, its general land use practice. If you read any land use journals, particularly on clustering, these are the areas, as well as agricultural areas, that they recommend protecting in perpetuity.

Stevens asked if Mulcahy could address the calculation.

Mulcahy stated it should be 20 lots. They're counting the open space lot that was labeled Lot 21. We could have labeled it open space, Parcel B that could have a house on it. It's the open space parcel. You can't have a remainder so you have to label it. The open space can't be developed. If your open space parcel is over 20 acres in size, it can be used as a single-family residential parcel.

Larsen clarified that because the open space lot is over 46 acres, they were allowed to have one home on it. It's a large parcel and not part of the cluster development.

Mulcahy said that because there are sensitive areas on that parcel, they created the building envelope to say that this is the only place you can build in this lot.

Stevens was confused. If the open space lot was part of the

subdivision, then it was a lot in the subdivision but they don't call it a lot in the calculations.

Mulcahy said it was the open space parcel and for the number of lots in the cluster no they did not use it for calculations. They could have designated it 'Open Space B' and put a building envelope on it. It's labeled Lot 21. He read Section 5.09.040 FCSR that states the open space parcel can have a single family residential dwelling if it's over 20 acres in size.

Stevens reiterated his confusion.

Mulcahy commented he understood the confusion but Lot 21 was always the open space lot.

The board and Mulcahy discussed at length the calculations for the clustering, the open space lot and other large subdivisions in Flathead County that have designated open space and clustering.

Horn pointed out the commissioners' minutes where Mitchell asked for a definition of a flag lot by the county attorney's office. He asked if Mulcahy wanted to comment on that.

Mulcahy stated the flag lot was before this option that is before the board. He didn't think the county attorney ever gave Commissioner Mitchell a definition.

Ezell said there was no written correspondence that was provided to staff between the county attorney and Commissioner Mitchell. If there were conversation that might have taken place there was no information provided to staff or anyone else.

Mulcahy said the lot has been changed so that there isn't a flag lot anymore.

Sirucek asked Mulcahy to comment about the infrastructure taking place prior to approval of the preliminary plat.

Mulcahy said they have platted Phase 1 and the commissioners have approved that. That's where the utilities are being installed. There is another neighbor that might be doing work but that has nothing to do with this proposal.

**STAFF
REBUTTAL
8:59 pm**

Ezell said she didn't have any comments at this time.

Mussman tried to make things less confusing by adding that the open space lot with a single family dwelling on it could be considered an accessory use. The primary use of the open space lot in the cluster subdivision is the open space. If you have an open space lot over 20 acres then the accessory use is the single family dwelling. That's why it's not in the density calculations. Staff agrees with Mulcahy.

**BOARD
DISCUSSION
(Continued)
9:00 pm**

Stevens asked Mr. Rudbach if he had anything to add.

Rudbach pointed out exhibit 8 of his handout and commented that in his profession you look at what is said, you don't get testimony from the people that helped draft it; you look at the plain language. He read Section 5.09.020 FCZR and stated it would be the parent tract or the whole tract including the open space for the calculating cluster density allowance. He also read Section 5.09.040 open space requirements and commented that nothing in that section says you don't count that dwelling unit on the open space lot. He stated that the board would have to count the 10' -half mile long strip of land as well, that's a lot too and he didn't understand why that wouldn't be factored into the calculations.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP-16-01)
9:03 pm**

Stevens made a motion seconded by Sirucek to adopt Staff Report FPP-16-01 as Findings of Fact.

**BOARD
DISCUSSION
9:03 pm**

Heim commented that it seemed to him that the new information tells the board that the finding is there's a disagreement about how the calculations are made for density. Based on public testimony tonight there is a difference of opinion about what our own regulations say about density calculations.

**SECONDARY
MOTION
ADD F.O.F
9:04 pm**

Heim made a motion seconded by Sirucek to add a Finding-of-Fact that states based on public testimony tonight it revealed that Flathead County Subdivision Regulations and Zoning Regulations are interpreted differently by public testimony vs. standard interpretations.

Based on public testimony there is a difference of interpretation on how to do the calculations based on the county zoning regulations.

Larsen clarified...There is a disagreement on interpretation of the amount of lots under the clustering provisions of the FCZR.

Stevens commented that it wouldn't make a difference at this point.

Sirucek said you could put a condition like the one for the access that the county attorney and the neighbors' attorney look at that question and make a decision.

Larsen commented it was a good finding-of-fact and he was in favor of it.

Horn asked the board if they were going to ask the attorneys to make a decision should they specify in more detail what the disagreement is.

Larsen said it's how they calculated it that the disagreement is based on and the attorney's would know that.

**ASK THE
QUESTION
7:44 pm**

Sirucek asked the question.

**ROLL CALL TO
ADD F.O.F.
(FPP-16-01)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO ADOPT
F.O.F. AS
AMENDED
(FPP-16-01)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FPP-16-01)**

Stevens made a motion seconded by Horn to adopt Staff Report FPP-16-01 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Sevens commented that he listened carefully to all the comments and considered everything they had to say. He didn't find the argument regarding not approving the preliminary plat unless they had access to be persuasive because they wouldn't be able to do a lot of preliminary plats because they can't even apply for

access until they have preliminary plat approval. The discussion regarding the fact that a dwelling unit should be considered in the calculations instead of the straight area calculation he didn't feel the intent of the cluster provision had been based on acreage. He stated there was a condition regarding access to the subdivision and a condition that addressed density. He made a comment that the board has the ability to put people under oath and as long as it's not a criminal question they have to answer. He stated he was really close to doing that. He said the board has the conditions in there that satisfy him.

**SECONDARY
MOTION
ADD
CONDITION**

Stevens made a motion seconded by Sirucek to add a condition that states the density calculation for this open space area be reviewed by the county attorney and the calculations in the application approved for the proposed number of lots.

**ASK THE
QUESTION**

Larsen asked the question.

**ROLL CALL TO
ADD
CONDITION
(FPP-16-01)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Sirucek wanted to comment on the open space lot and where the home could be located. He also commented on the access stating there is nothing in writing that says what the maximum lots could be. The agreement or the perception by the neighbors has to get ironed out. He didn't feel it was the boards place to get in the middle of that from a legal standpoint.

Larsen stated for full disclosure that he did speak with Molly Schwarz on a couple of occasions. His major concern when he voted to deny the application was the flag lot. He spoke about why he didn't agree with planning staff when there was a 60' right-of-way going back there it wasn't a flag lot. He said when he looked at that lot the way it was drawn it looked like a flag lot. He commented that the planning process was risky and there were no guarantees. Planning staff does the very best job they can to give applicants recommendations but as the proposals go through the planning board and the county commissioners sometimes they don't always agree with the planning staff. He always looks to see if a proposal complies with the regulations and in his opinion it didn't comply with the regulations with the flag lot. They solved a lot of the problems. The board addresses

the requirements with conditions. They do it for DEQ and they've done it for access. It is a two-step process. Planning staff will make sure they meet all the conditions when they come in with their final plat. His concerns have been addressed and he will vote in favor of the proposal.

Ezell commented that condition # 24 needed to be deleted as it is now irrelevant because the applicants have withdrawn their request for a variance.

**MOTION TO
DELETE
CONDITION #24**

Sirucek made a motion seconded by Horn to delete condition #24.

**ROLL CALL TO
DELETE
CONDITION #24**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Heim read a portion of the approach permit and stated he didn't see where the same parties had to agree to any changes. He brought up the public comment that said if the board was to approve the subdivision they would be an accomplice to breaking the agreement. He stated that the state sent a letter that said only the developer had to sign for a new permit. He also commented there are procedures in place to change zoning on property.

Larsen said MDT looks at it as a safety issue.

Heim spoke about the neighbors having a problem with traffic.

Hemp spoke at length on behalf of the neighbors that had moved a barn because of Mannington Road going in.

Larsen discussed at length the easement issue and the approach permit.

Horn commented about the cost of moving the barn and the fact it's a civil matter.

Ezell spoke about the agreement and the fact MDT doesn't hold firm to the agreement of only 12 lots or more.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FPP-16-01)
9:42 pm**

On a roll call vote the motion passed unanimously.

**ANDERSEN ROE
SUBDIVISION
(FPP-16-06)
9:46 pm**

A request from Gwyn Andersen for preliminary plat approval of Andersen-Roe Subdivision, a proposal to create 1 additional lot on 20.612 acres and located on the north side of Mennonite Church Road, approximately ½ mile east of Montana Highway 35. The proposed subdivision lots would be served by individual wells and septic. The property is currently unzoned.

**STAFF REPORT
9:46 pm**

Ezell reviewed the Staff Report FPP-16-06 for the Board.

**BOARD
QUESTIONS
9:53 pm**

None

**APPLICANT
PRESENTATION
9:53 pm**

Erica Wirtala, Sands Surveying Inc., 2 Village Loop represented the applicants. She stated the two-lot subdivision is being reviewed as a major subdivision due to the lot having been split more than five times since 1973. She spoke about the agency comment from Marc Pitman from DNRC, and his concerns about the elevations that were shown on the face of the preliminary plat. When they constructed the preliminary plat they were fortunate to use Lidar data which was flown in 2009 and is an incredibly accurate map of the contours of a piece of property. The range of errors on that is plus or minus three centimeters. They are very confident on the lay of the land on this piece of property. They have shown the 100-year floodplain on the face of the preliminary plat and since it doesn't quite line up with the line for the no-build zone, planning staff has placed a condition of approval stating the applicant will make sure those line up. She spoke to Pitman recently and he sent an updated comment to staff and the board with a revised BFE of 2967. He did add that perhaps homes should be built without basements in this area. She proposed adding a condition #18 for the boards' consideration. She read her proposed condition: "The applicant will work with the Certified Floodplain Manager (CFM) to determine the necessity of a BFE and will comply with the requirements of the state floodplain statutes." She felt that might address any concerns the board may have. In regards to

Mr. Pitman's comment regarding the water rights and the well, staff has suggested removing condition #17. Wirtala proposed replacing it with the following: "The applicant will comply with the permitting process required for obtaining two exempt wells for residential use which is typically 35 gallons per minute, 10 acre feed." She spoke about the public comment that had concerns about the soils on the subject property. There has been an excessive amount of sanitation work done and in fact lot two (2) already has an approved septic system in place. Ground water monitoring was done and three soil pits were dug on this piece of property. They submitted a warranty deed as part of the application packet which states the property owner can only split it one time. She stated the applicant spoke with the gentleman who submitted the comment regarding the existence of a road maintenance agreement or perhaps covenants, conditions and restrictions. She called the title company and her realtor to see if anything had been missed but was reassured they found nothing as far as restrictions. Wirtala said the applicant as well as their realtor was present to answer any questions.

**BOARD
QUESTIONS
10:04 pm**

None

**AGENCY
COMMENTS
10:04 pm**

None

**PUBLIC
COMMENT
10:04 pm**

None

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP-16-06)
10:04 pm**

Heim made a motion seconded by Lake to adopt Staff Report FPP-16-06 as Findings of Fact.

**BOARD
DISCUSSION
10:05 pm**

None

**ASK THE
QUESTION
10:05 pm**

Larsen asked the question.

**ROLL CALL TO
ADOPT F.O.F.
(FPP-16-06)
10:05 pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FPP-16-06)
10:05 pm**

Lake made a motion seconded by Horn to adopt Staff Report FPP-16-06 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION
10:05 pm**

Larsen wanted to address Wirtala's proposed condition #17. He didn't think it was necessary as that's required under the DEQ submittal process. She did want to add a floodplain condition so that would be the only one the board needed to add.

**SECONDARY
MOTION ADD
CONDITION #18
10:07 pm**

Stevens made a motion seconded by Horn to add condition #18 to read: The applicant will work with the Certified Floodplain Manager (CFM) to determine the necessity of a BFE and will comply with the requirements of the state floodplain statutes.

**ASK THE
QUESTION**

Larsen asked the question

**ROLL CALL TO
ADD
CONDITION #18
10:07 pm**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION
10:07 pm**

Sirucek stated he could not support the proposal because he felt that area should have never been subdivided as it takes away from agricultural and that is literally the best soil in the United States. He felt it was a crime that it was subdivided initially.

**ASK THE
QUESTION
10:08 pm**

Larsen asked the question.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FPP-16-06)
10:08 pm**

On a roll call vote the motion passed 5-1 with Sirucek dissenting.

**LABRANT
LINDSEY LANE
TEXT
AMENDMENT
(FZTA-16-01)
10:09 pm**

A request by the LaBrant/Lindsey Lane Land Use Advisory Board and the Planning and Zoning Office for amendments to Section 3.39 of the Flathead County Zoning Regulations. The amendments include proposed changes to Section 3.39.030, Conditional Uses, Section 3.39.040, Lot Size and Dimensional Requirements, and Section 3.39.120, Definitions.

The board took a short recess

**STAFF REPORT
10:10 pm**

Mussman reviewed the Staff Report FZTA-16-01 for the Board.

**BOARD
QUESTIONS
10:12 pm**

Stevens asked about the requirements for a Bed & Breakfast and an Accessory Dwelling Unit (ADU).

Mussman stated he could have a primary residence and a couple of cabins, one for a Bed & Breakfast and one for an Accessory Dwelling Unit (ADU). But it couldn't be a detached Bed & Breakfast and a detached ADU and a guest house. Because Bed & Breakfast are conditional uses and the ADU is a conditional use it would have to go before the land use advisory committee for a recommendation to the Board of Adjustment. If he had a detached dwelling unit that he used for a Bed & Breakfast and also wanted to add a detached ADU, that would require a conditional use approval or denial. The committee was also starting conversations whether or not they wanted to address short-term rentals in the LaBrant-Lindsey Lane area but the decision was to see how the Bed & Breakfast change and definition goes before they contemplate short-term rentals. This change allows an owner or manager occupied short-term rentals with a conditional use permit.

**AGENCY
COMMENTS
10:14 pm**

None

**PUBLIC
COMMENT
10:15 pm**

None

**MAIN MOTION
TO ADOPT
F.O.F
FZTA-16-01
10:15 pm**

Stevens made a motion seconded by Sirucek to adopt FZTA-16-01 as Findings-of-Fact.

**BOARD
DISCUSSION
10:15 pm**

None

**ASK THE
QUESTION
10:15 pm**

Larsen asked the question

**ROLL CALL TO
ADOPT F.O.F
FZTA-16-01
10:15 pm**

On a roll call vote the motion passed unanimously

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
TEXT
AMENDMENT
AS WRITTEN
(FZTA-16-01)
10:16 pm**

Stevens made a motion seconded by Heim to recommend approval of Text Amendment FZTA-16-01 as written to the Board of County Commissioners.

**BOARD
DISCUSSION
10:16 pm**

None

**ASK THE
QUESTION
10:16 pm**

Horn asked the question.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FZTA-16-01)
10:16 pm**

On a roll call vote the motion passed unanimously.

**OLD BUSINESS
10:16 pm**

Sirucek informed the board that he had spoken with Fish, Wildlife & Parks regarding the comment letters the office sends and stated he informed them that standard wording is not as meaningful as it could be and if they really have a concern they need to let the board know.

**NEW BUSINESS
10:17 pm**

Mussman informed the board that Dave DeGrandpre of Land Solutions has applied for a zone change and text amendment and to create a new Highway 93 overlay south of Whitefish. The files are tentatively scheduled for a public hearing on January 11, 2017. Next Thursday the Whitefish Planning Board will hold a workshop regarding this. He asked the board if it would be better to hold a workshop on this, he thought it would be. He commented that the board could hold the public hearing and see how it goes and then hold a workshop if necessary.

Larsen commented he would rather have a hearing.

Mussman said he just wanted to run that by the board to give them that option.

Heim said he would like to hold the hearing.

Mussman said if any member of the board wanted to look at the files just let him know and he can email it to them.

Mussman informed the board that the Northwest Montana Association of Realtors (NMAR) has submitted a text amendment to allow short-term rentals in residential areas. They would like to have a workshop and have requested the workshop for January. He commented that the January meeting docket was very busy. He stated the bylaws do allow the board to meet the second and third Wednesdays of the month. His thought was that NMAR was trying to get something in place before the next rental season.

Larsen commented he didn't want to start having more than one meeting a month.

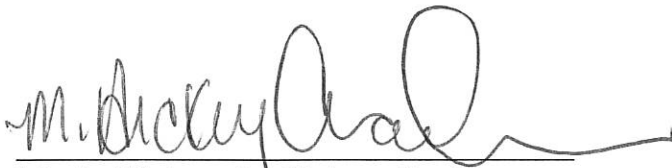
Stevens commented that after the January 11th hearing they may have to hold a workshop on the Whitefish Corridor files.

Horn asked what NMAR was proposing.

Mussman clarified. He confirmed there will be a hearing on the Whitefish Corridor Study in January and a workshop for the NMAR text amendment in February.

ADJOURNMENT
10:23 pm

The meeting was adjourned at approximately 10:23 pm on a motion by Sirucek. The next meeting will be held on December 14, 2016 at 6:00 pm.



Marie Hickey-AuClaire, Chairman



Danene Thornton, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 12 / 14 / 16